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KERALA GAZETTE

EXTRAORDINARY

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 5058/LA4A/75. *Dated Trivandrum, 27th July 1975.*

The Abkari (Second Amendment) Bill, 1975 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1975.

33/2541/MC.

Fourth Kerala Legislative Assembly

Bill No. 225

THE ABKARI (SECOND AMENDMENT) BILL, 1975

A

BILL

further to amend the Abkari Act, 1 of 1077.

Preamble.—WHEREAS it is expedient further to amend the Abkari Act, 1 of 1077, for the purposes hereinafter appearing;

BE it enacted in the Twenty-Sixth Year of the Republic of India as follows:—

1. *Short title and commencement.*—This Act may be called the Abkari (Second Amendment) Act, 1975.

(2) It shall come into force at once.

2. *Substitution of new section for section 34.*—For section 34 of the Abkari Act, 1 of 1077, (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

"34. *Offenders may be arrested and contraband liquor, vehicles, etc., seized without warrant.*—(1) Any officer of the Excise Department or the Police Department may arrest without warrant in any public thoroughfare or open place other than a dwelling house, any person found committing an offence punishable under section 15C or section 55 or section 57 or section 58, and in any such thoroughfare or public place may—

(a) seize and detain—

(i) any liquor or intoxicating drug;

(ii) any material, still, utensil, implement or apparatus;

(iii) any receptacle, package or covering; and

(iv) any animal, cart, vessel or other conveyance,

which he has reason to believe to be liable to confiscation under this Act;

(b) search any person, animal, cart, vessel or other conveyance, package, receptacle or covering upon whom or in or upon which he may have reasonable cause to suspect any such liquor or intoxicating drug to be, or to be concealed.

(2) If the officer making an arrest under sub-section (1) is not empowered under section 5A to admit to bail, the person arrested shall forthwith be produced before an officer so empowered.

(3) It shall be the duty of the officer empowered under section 5A to admit such person to bail if sufficient bail is tendered for his appearance before an Abkari Officer having jurisdiction to inquire into the case.".

3. *Amendment of section 67.*—In section 67 of the principal Act,—

(a) in the first paragraph,—

(i) for the words "two thousand rupees", the words "five thousand rupees" shall be substituted;

(ii) the portion beginning with the words "and, in all cases whatsoever" and ending with the words "on payment of the value thereof as estimated by such officer" shall be omitted;

(b) for the second paragraph, the following paragraph shall be substituted, namely:—

"On the payment of such sum of money to such officer, the accused person if in custody shall be discharged and no further proceedings shall be taken against such person.".

4. *Insertion of new sections 67B to 67H.*—After section 67A of the principal Act, the following sections shall be inserted, namely:—

"67B. *Confiscation by Abkari Officers in certain cases.*—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any liquor, intoxicating drug, material, still, utensil, implement or apparatus or any receptacle, package or covering in which such liquor, intoxicating drug, material, still, utensil, implement or apparatus is found or any animal, cart, vessel or other conveyance used in carrying the same is seized and detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the same before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Excise Commissioner (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes and detains any property specified in sub-section (1) or where any such property is produced before an authorised officer under that sub-section and he is satisfied that an offence under this Act has been committed in respect of or by means of that property and that such property is liable to confiscation under this Act, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property and where such property consists of any receptacle or package, the authorised officer may also order confiscation of all contents thereof.

(3) When making an order of confiscation under sub-section (2), the authorised officer may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed.

67C. *Issue of show cause notice before confiscation under section 67B.*—(1) No order confiscating any property shall be made under section 67B unless the person from whom the same is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made under section 67B if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicating drug or the material, still, utensil, implement or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

67D. *Property not liable to confiscation to be returned to owner.*—Where the authorised officer passes an order under section 67B that any property seized and detained by him or produced before him under that section is not liable to confiscation under this Act, he shall, after the expiry of thirty days from the date of such order, release such property to the person from whom it was seized:

Provided that where the Commissioner has called for under section 67F the record of an order of the authorised officer such property shall be released only subject to the orders of the Commissioner under that section.

67E. *Appeal.*—(1) Any person aggrieved by any order passed under section 67B may, within thirty days from the date of communication to him of such order, appeal to an officer not below the rank of Deputy Commissioner of Excise authorised by the Government in this behalf by notification in the Gazette (hereinafter referred to as the appellate authority),

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as may be necessary, pass such order as he thinks fit, confirming, modifying or annulling the order appealed against.

(3) An order of the appellate authority under sub-section (2) shall, subject to the provisions of section 67F, be final and shall not be called in question in any court.

67F. *Revision.*—(1) The Commissioner may, before the expiry of thirty days from the date of an order passed under section 67B or section 67E, of his own motion, call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that the Commissioner shall not call for and examine the record of any order passed under section 67B if an appeal against such order is pending before the appellate authority:

Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

(2) An order of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court.

67G. *Award of confiscation not to interfere with other punishments.*—The award of any confiscation under section 67B or section 67E or section 67F shall not prevent the infliction of any punishment to which any person is liable under this Act.

67H. *Property confiscated when to vest in Government.*—When an order for confiscation of any property has been passed under section 67B or section 67E or section 67F and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the Government free from all encumbrances.".

5. *Validation.*—Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court, all animals, carts, vessels and other conveyances used in carrying any receptacle, package or covering containing any liquor, intoxicating drug, material, still, utensil, implement or apparatus in respect of, or by means of which, an offence under the principal Act is believed to have been committed, and seized and detained before the commencement of this Act may be disposed of under the provisions of the principal Act as amended by this Act, as if this Act were in force at the time of such seizure and detention.

STATEMENT OF OBJECT AND REASONS

Section 67 of the Abkari Act, I of 1077, provides that any Abkari Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clauses (a) and (b) of section 26 or who is reasonably suspected of having committed an offence under section 55, 56, 57, 58 or 63 a sum of money not exceeding two thousand rupees in lieu of such cancelment or suspension or by way of composition for the offence which may have been committed, as the case may be, and in all cases whatsoever in which any property has been seized as liable to confiscation under the said Act, such property may, at the option of such officer, be confiscated or released on payment of the value thereof as estimated by such officer. Section 66 of the Act empowers the Magistrate to order confiscation of any property liable to confiscation under the Act.

2. In its judgment in writ appeal No. 213 of 1975, a Division Bench of the Kerala High Court has held that when a Magistrate acts under Section 66 the judicial approach and the exercise of a judicial discretion are enough safeguards when it is combined with a judicial process which necessarily spells a judicial procedure, that section 67 significantly does not provide for any such safeguards for hearing the person claiming to be the owner of a vehicle seized or claiming to have an interest in the vehicles seized, that this cannot be understood as deliberately providing two different procedures for confiscation, the use of the wellknown judicial procedure and the other the summary and even arbitrary procedure, that the basis of confiscation under section 67 is the confession of a guilt and that this being so the confiscation which follows such confession must be of a thing which belonged to the person who confessed.

3. In view of the limited meaning given to section 67 by the High Court, that section has become ineffective in regard to confiscations. There has been large scale illegal manufacture and transport particularly by motor vehicles of liquor and intoxicating drugs in the State in recent times in an organised manner and such illegal manufacture and transport of liquor and intoxicating drugs are posing serious hazards to the health of the people and causing considerable loss of revenue to the Government. Section 67 of the Act as interpreted by the High Court and the other existing provisions of Law are inadequate to effectively check such illegal manufacture and transport of liquor and intoxicating drugs and to effectively prevent large scale use of motor vehicles for such transport. Therefore it is considered necessary to amend the

Abkari Act, 1 of 1077, incorporating provisions empowering certain officers to confiscate liquor, intoxicating drugs, vehicles, etc., which are liable to confiscation under the Act and providing for necessary safeguards against the arbitrary exercise of such power. It is also considered necessary to make the procedure contained in the new provisions applicable in respect of conveyances seized and detained before the commencement of the Amendment Act.

4. It is also proposed to avail of this opportunity to enhance the fee for composition of offences from Rs. 2000 to Rs. 5000 and also to substitute a new section for section 34 of the Act to make the intention clear.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 67B proposed to be inserted in the principal Act by clause 4 of the Bill seeks to empower the Government to authorise officers not below the rank of Assistant Excise Commissioner to confiscate properties liable to confiscation under the Act. Section 67E proposed to be inserted in the principal Act by the said clause seeks to empower the Government to authorise officers not below the rank of Deputy Commissioner of Excise to hear appeals against orders of confiscation.

2. The powers proposed to be conferred on the Government are of a routine nature and therefore the delegation of legislative power is of a normal character.

BABY JOHN.

Reg. No. KL/TV/12.

KERALA GAZETTE

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 5059/LA4/75. *Dated Trivandrum, 27th July 1975.*

The Kerala Municipal Corporations (Second Amendment) Bill, 1975 together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

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33/2544/MC

Fourth Kerala Legislative Assembly
Bill No. 226

THE KERALA MUNICIPAL CORPORATIONS (SECOND AMENDMENT) BILL, 1975

A

BILL

to provide for the extension of the term of office of the Mayor, Deputy Mayor and other councillors and members and chairmen of standing committees of the Corporation of the City of Cochin.

Preamble.—WHEREAS it is expedient to provide for the extension of the term of office of the Mayor, Deputy Mayor and other councillors and members and chairmen of standing committees of the Corporation of the City of Cochin;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipal Corporations (Second Amendment) Act, 1975.

(2) It shall be deemed to have come into force on the 31st day of May, 1975.

2. *Extension of the term of office of Mayor, Deputy Mayor, councillors, etc., of the Corporation of the City of Cochin.*—Notwithstanding anything contained in the Kerala Municipal Corporations Act, 1961 (30 of 1961) (hereinafter referred to as the said Act), the term of office of the Mayor, the Deputy Mayor and other councillors and the members and chairmen of standing committees of the Corporation of the City of Cochin constituted under the said Act, which expires on the 2nd day of June, 1975, shall extend upto noon on the 2nd day of December, 1975.

3. *Act 30 of 1961 to be modified temporarily.*—The provisions of the said Act shall, in relation to the Corporation of the City of Cochin, have effect subject to the following modifications, namely:—

(a) the Government shall cause elections to be held to the council so that the newly elected councillors may enter upon office on the 2nd day of December, 1975;

(b) the term of office of the newly elected councillors shall, subject to the provisions of the said Act, expire at noon on the 2nd day of December, 1980;

(c) the election of the Mayor and the Deputy Mayor shall be held at the first meeting of the council after the 2nd day of

December, 1975, and the election of the chairman of each standing committee shall be held at the first meeting of such committee after the election of the Mayor;

(d) no election of the Mayor or the Deputy Mayor shall be held at the first meeting of the council in June, 1975, as required by section 28 of the said Act.

4. *Repeal and saving.*—(1) The Kerala Municipal Corporations (Second Amendment) Ordinance, 1975 (3 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance or under the said Act as modified by the said Ordinance shall be deemed to have been done or taken under this Act or, as the case may be, under the said Act as modified by this Act.

STATEMENT OF OBJECTS AND REASONS

The term of office of the Mayor, Deputy Mayor and other councillors and members and chairmen of standing committees of the Corporation of the City of Cochin was due to expire on the 2nd day of June, 1975. According to sub-section (2) of section 67 of the Kerala Municipal Corporations Act, 1961 (30 of 1961), the election to the Corporation Council has to take place within a period of two months immediately preceding the date of expiry of the term of office of the councillors. Since printing of the electoral rolls was not completed, it was not possible to conduct the election in time. It had, therefore, become necessary to extend the term of office of the Mayor, Deputy Mayor and other councillors and members and chairmen of standing committees of the Corporation of the City of Cochin. Since the Legislative Assembly was not in session, the Kerala Municipal Corporations (Second Amendment) Ordinance, 1975 (3 of 1975), was promulgated by the Governor on the 31st May, 1975, extending the term of office of Mayor, Deputy Mayor and other councillors and members and chairmen of standing committees of the said Corporation for a period of six months from the 2nd day of June, 1975. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

K. AVUKADERKUTTY NAHA.

Government of Kerala
1975

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 5060/LA4A/75. *Dated Trivandrum, 27th July 1975.*

The Kerala Forest (Amendment) Bill, 1975 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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33/2546/MC

Fourth Kerala Legislative Assembly
Bill No. 227

THE KERALA FOREST (AMENDMENT) BILL, 1975

A

BILL

further to amend the Kerala Forest Act, 1961.

Preamble.—WHEREAS it is expedient further to amend the Kerala Forest Act, 1961, for the purposes hereinafter appearing;

BE it enacted in the Twenty-sixth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Kerala Forest (Amendment) Act, 1975.

2. *Amendment of section 52.*—In section 52 of the Kerala Forest Act, 1961 (4 of 1962) (hereinafter referred to as the principal Act), in the Explanation to sub-section (1), for the words and figures "section 53 and section 55", the words, figures and letters "section 53, section 55, section 61A and section 61B" shall be substituted.

3. *Insertion of new sections 61A to 61F.*—After section 61 of the principal Act, the following sections shall be inserted, namely:—

"61A. *Confiscation by Forest Officers in certain cases.*—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed

in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

61B. *Issue of show cause notice before confiscation under section 61A.*—(1) No order confiscating any timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle shall be made under section 61A unless the person from whom the same is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such timber, charcoal, ivory, tools, ropes, chains, boats, vehicles or cattle;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, charcoal, firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

61C. *Revision.*—Any Forest Officer not below the rank of Conservator of Forests authorised by the Government in this behalf by notification in the Gazette may, before the expiry of thirty days from the date of the order of the authorised officer under section 61A, *suo motu* call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit:

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. *Appeal.*—(1) Any person aggrieved by any order passed under section 61A or section 61C may, within thirty days from the date of communication to him of such order, appeal to the District judge having jurisdiction over the area in which the

property to which the order relates has been seized and the District judge shall, after giving an opportunity to the appellant to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the District Judge under sub-section (1) shall be final.

61E. *Award of confiscation not to interfere with other punishments.*—The award of any confiscation under section 61A or section 61C shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

61F. *Property confiscated when to vest in Government.*—When an order for confiscation of any property has been passed under section 61A or section 61C and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the Government free from all encumbrances".

4. *Repeal and saving.*—(1) The Kerala Forests (Amendment) Ordinance, 1975 (5 of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 21st day of June, 1975.

STATEMENT OF OBJECTS AND REASONS

It was brought to the notice of the Government that there had been large scale illicit removal of timber, charcoal, firewood and ivory belonging to the Government, from the forests in the State. The provisions contained in the Kerala Forest Act, 1961, were found to be inadequate to effectively prevent the illicit removal of such forest produces belonging to the Government. Therefore, it was considered necessary to amend the Kerala Forest Act incorporating deterrent provisions to effectively prevent such illicit removal.

2. As the proposed amendments had to be made immediately and as the Legislative Assembly was not in session, the Kerala Forest (Amendment) Ordinance, 1975, was promulgated by the Governor on the 21st June, 1975. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 61A proposed to be inserted in the principal Act by clause 3 of the Bill seeks to empower the Government to authorise officers not below the rank of Assistant Conservator of Forests to order confiscation of vehicles, boats etc. Section 61C proposed to be inserted in the principal Act by the said clause seeks to empower the Government to authorise forest officers not below the rank of Conservator of Forests to *suo motu* revise the orders of the authorised officer.

2. The powers proposed to be conferred on the Government are of a routine nature and therefore the delegation of legislative power is of a normal character.

Dr. K. G. ADIYODI.